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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,062	10/09/2003	Jay S. Walker	02-034	8164

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EXAMINER
RENDON, CHRISTIAN E

ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/682,062	WALKER ET AL.
	Examiner	**Art Unit**	
	CHRISTIAN E. RENDÓN	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *0/29/08*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *2-10 and 18-38* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *2-10 and 18-38* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

       1. ☐ Certified copies of the priority documents have been received.

       2. ☐ Certified copies of the priority documents have been received in Application No. _____.

       3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This office action is in response to the amendment filed on 09/29/08 in which applicant responded to

the claim rejections. Claims 2-10 and 18-38 are still pending.

Claim Rejections - 35 USC § 112

Claims 3-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the

enablement requirement. The claim(s) contains subject matter which was not described in the

specification in such a way as to enable one skilled in the art to which it pertains, or with which it is

most nearly connected, to make and/or use the invention. The language from claim 2 defines first

feature on a first game. The language of the dependent claims attempt to establish a first/second

feature on a second/first gaming device however fails to define the relationship of the first & second

gaming device in terms of game play, location, etc. therefore providing an unclear scope of the

claims.

Claim Rejections - 35 USC § 102

Claims 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Rowe (7,162,036 B2).

1.   Rowe discloses generating a signature that uniquely represents the plurality of gaming objects

associated with the current gaming application (Rowe: abstract). The term gaming object (Rowe: col.

3, lines 39-41) is viewed within the scope of object oriented programming by the prior art (Rowe: col.

2, lines 24-26). The prior art identifies the current state of the gaming application by creating an

authentication code based on the unique signatures of the objects (Rowe: col. 3, lines 50). The

unique ID or signature is then verified by an application game server (Rowe: col. 9, lines 20-28) by

comparing a stored signature with the transmitted version and then displaying the appropriate

message (Rowe: col. 9, lines 60-67).

Claim Rejections - 35 USC § 103

Claims 2-9 & 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acres (US 6,375,567 B1) in view of Rowe.

1.   The above description of the invention disclosed by Rowe plus its limitations is considered within this art rejection.

2.   Acres discloses a method for operating a group of electronic gaming machines (EGM) interconnected by a network to play both a primary and secondary game (Acres: abstract). After a triggering event for a secondary event occurs, a parameter related to the machine is measured (Acres: col. 6, lines 56-57) as a means to determine the results of the secondary game (Acres: col. 10, lines 39-40). In other words, a player is allowed to win at a secondary game if an action like of total coins played, the rate of play on the machine, a maximum bet made, etc. is met (Acres: col. 6, lines 56-57) compared to a predetermined criteria (Acres: col. 3, lines 49-53).

3.   Regarding claims 2, the prior art teaches determining from a gaming machine a measure of profitability, total coins played since the last triggering event (Acres: Acres: col. 10, 29-30), the rate of play or a maximum bet (Acres: col. 6, lines 56-57). The collected information is compared a predetermined criteria, the 400th coin-in (Acres: col. 10, line 30) or one coin played on average of every 20 seconds (Acres: col. 3, lines 51-52) and based on the difference a feature is enabled or not, the player winning a prize (Acres: col. 10, lines 40-45). Therefore Acres discloses all of the applicant's limitations except the outputting of an authentication code. Due to gaming compliance requirements, a game code must be secure and authenticated (Rowe: col. 9, lines 20-28). Therefore as a means to verify the integrity of an EGM a person of ordinary skill level would include the authentication processes taught by Rowe; to confirm the current state of the EGM or if a jackpot prize was awarded based on a rate of play.

4.   Regarding claims 3-9, the Examiner views the prior art's decision to awarded of a prize (Acres: col. 10, lines 40-45) as an equivalent to the applicant's limitation about enabling of a feature. Therefore the prior art also teaches disabling the feature on a gaming device regardless of hierarchy. Since the claim language is unclear, for now the Examiner views no difference between a first and second feature. In other words, second feature is viewed as another bonus prize.

5.   Regarding claims 18-19, the data collected by the gaming machine is a means to determine a level of profitability of an EGM and player for the casino establishment (Acres: col. 5, lines 4-12). Therefore every player's game lose equates to more money for the casino and the prior art establishes rate of return for the casino based on player's wager, rate of play & coin-in deposited criteria being met (Acres: col. 6, lines 56-57).

Claims 10 & 20-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acres in view of Rowe and Acres (US 2001/0055990 A1).

6.   The above description of the prior art combination disclosed by Acres and Rowe plus their limitations are considered within this art rejection.

7.   Regarding claim 20, Acres (2001/0055990) from here on out is referred to as John. The system disclosed by John allows a casino to monitor the activities of each EGM (John: par. 38, lines 1-3) and adapt a set of configurable parameters (John: par. 17, lines 1-3) in response to the collected data. Allowing a casino to remotely vary the cost to the player in response to periods of high and low demand (John: par. 14, lines 1-3). In other words, the casino can lower the cost of a game as a means to attract a player (John: par. 12, line 21) during periods of time that are know as off-peak moments (John: par. 12, lines 14-18). John discloses measuring the rate or usage of a first game as a means to determine the level of demand for the EGM (Acres: par. 38, lines 1-5) and in turn determine a payback percentage (Acres: par. 47, lines 6-7) that maximizes the casino's revenues (Acres: par. 12, lines 8-9). Furthermore the prior art discloses configuring secondary or bonus games

in the same manner as the first game as a means to overcome the disclosed disadvantages in the current state of the art (Acres: par. 10, lines 8-10). In other words, the system is able to alter the bonus pay tables based on the disclosed parameters (Acres: par. 53, lines 3-8). Therefore the prior art discloses measuring a level of usage in a first/second game and altering the payment based on usage. Therefore the prior art discloses a theoretical calculation as a function of payback percentage and game speed. In other words, the calculation helps the casino to determine if an increase of the cost to the player will increase revenues (Acres: par. 12, lines 5-9). A person of ordinary skill would include the features found in John into Acres as a means of calculating when to encourage continued play on the EGM (Acres: col. 2, lines 47-48).

8.   Regarding claim 10, John teaches configuring a pay table based on the rate of usage at the EGM (John: par 37, lines 6-10).

9.   Regarding claim 21-25, Acres teaches tracking a player's activities such as amounts wagered and won, total amount wagered, etc. for the purpose of offering complementary items or service (Acres: col. 5, lines 6-12). Therefore Acres provides all of the necessary information needed to determine an incremental wager amount if one choose to calculate that particular piece of information. Furthermore it is well known that a proper analysis or comparison can only occur when both values are represented in a common set of units.

10.   Regarding claims 25-29, John teaches awarding a payout based on the rate of play or measure of usage (John: par. 47, lines 6-7). The system all so monitors the period of time a game is played (John: fig. 5). Furthermore, the system also monitors the coin-in/out of the EGM (John: par. 56, lines 7-8) as a means to evaluate the rate of play at the EGM (John: par. 38, lines 1-4). Even though the prior art is silent about calculating the applicant's averages or a calculated difference, the Examiner views the prior art as fulfilling this limitation if one of ordinary skill deemed it necessary since the system already monitors all the required data.

11.   Regarding claims 30-31, Acres teaches tracking a player's activities such as amounts wagered

and won, total amount wagered, etc. for the purpose of offering complementary items or service

(Acres: col. 5, lines 5-12). Therefore the prior art teaches tracking a player's winning and offers or

services for marketing purposes.

12.   Regarding claims 32-33, John discloses determining the rate or usage of a first game as a

means to determine the level of demand for the EGM (Acres: par. 38, lines 1-5) and in turn determine

a payback percentage (Acres: par. 47, lines 6-7) that maximizes the casino's revenues (Acres: par.

12, lines 8-9). Therefore using the time of day and demand history John is able to calculate when to

active a feature like a better pay table based on a calculated win for the casino and a player.

Response to Arguments

Applicant's arguments filed 9/29/08 have been fully considered but they are not persuasive.

Arguments towards 35 USC 102 on claims 34-38

13.   The prior art states verifying a gaming application by checking specific individual objects

related to the application (col. 3, lines 43-48). It is well known in the art of object-oriented

programming that objects are self-sufficient modules containing all the information needed within its

own data structure for manipulation. It is also well known that a class defines the abstract

characteristics of an object, including the object's characteristics (its **attributes**, fields or properties)

and behaviors (what **it can do**, or methods, **operations** or **features**). Since the Examiner views no

distinction towards forms of data, the prior art teaches **accumulating data relating to usage of a**

gaming device by **generating an authentication code based on** the programming objects that are

implemented for use by the main code which contain data and operations or features that are

necessary towards accomplishing a goal. Furthermore, the unique ID or signatures are **received** and

verified by an application game server (Rowe: col. 9, lines 20-28).

Arguments towards 35 USC 103

14.   Regarding arguments towards claim 2 rejection, the Examiner has previously stated the art

teaching a **measure of profitability** by tracking the total number of coins played, the rate of play on

the machine, a maximum bet made, etc. is met (Acres: col. 6, lines 56-57). The determined results

are compared to predetermined criteria (Acres: col. 3, lines 49-53) thus teaching **determining a**

difference between the measure of profitability and a benchmark. Based on the calculated

difference a feature is enabled such as receiving a bonus award or not by offering the player no

reward (Acres: col. 10, lines 40-45) thus teaching **disabling a feature based on a difference**. As

stated above, Rowe teaches **generating and outputting an authentication code**.

15.   In addition, the Examiner respectfully notes no error in the interpretation of Acres with regards

to '**determining the results of the secondary game**'. The art states 'bonus amounts are awarded to

selected machines depending upon the outcome of secondary and tertiary games' (Acres: col. 3,

lines 39-41). In other words, the terms secondary and tertiary define the number of levels in the

games. However, the art determines a result based on only the secondary and tertiary levels and

rewards a prize based on the outcome of the tertiary game (Acres: col. 10, lines 39-40). Therefore the

art teaches **determining the results of the secondary** game even though the art calls is considering

the applicant's relationship between a secondary and tertiary game. Furthermore the Examiner would

like to point out determining a result based on relationship between a first/second, second/third or

tenth/eleventh produces the same predictable results and is unpatentable under KSR logic.

16.   Regarding any arguments towards Rowe please see the section above, 'Arguments towards

35 USC 102'.

17.   Regarding arguments towards claim 18-19 rejection, Rowe teaches outputting unique

signatures based on programmed objects to an application game server (Rowe: col. 9, lines 20-28).

Thus the prior art combination teaches **determining a code** or signature **based on the measured**

performance of the feature (data from the programmed object regarding a measured performance).

Previous Arguments

18.   As previously stated in the Requirement for Restriction mailed on 3/26/08:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

    I. Claims 1, 11-14, 17, drawn to a method that tracks a player's activities and customizable

        gaming experiences, classified in class 463 subclasses 23 and 29

    II. Claims 2-10, 18-38, drawn to a method that monitors and manages casino game data,

        classified in class 463, subclasses 25, 29 and 43.

2.   Inventions I - II are related as subcombinations disclosed as usable together in a single

combination. The subcombinations are distinct if they do not overlap in scope and are not obvious

variants, and if it is shown that at least one subcombination are separately usable. In the instant

case, subcombination II has separate utility such as monitoring and managing casino game data.

See MPEP § 806.05(d).

3.   The examiner has required restriction between subcombinations usable together. Where

applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s)

depending from or otherwise requiring all the limitations of the allowable subcombination will be

examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is

advised that if any claim presented in a continuation or divisional application is anticipated by, or

includes all the limitations of, a claim that is allowable in the present application, such claim may be

subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the

instant application.

4.   Because these inventions are independent or distinct for the reasons given above and there

would be a serious burden on the examiner if restriction is not required because the inventions have

acquired a separate status in the art in view of their different classification, restriction for examination

purposes as indicated is proper.

5.   Because these inventions are independent or distinct for the reasons given above and there

would be a serious burden on the examiner if restriction is not required because the inventions

require a different field of search (see MPEP § 808.02), restriction for examination purposes as

indicated is proper.

5.   Applicant is advised that the reply to this requirement to be complete must include (i) an

election of a species or invention to be examined even though the requirement be traversed (37 CFR

1.143) and (ii) identification of the claims encompassing the elected invention.

6.   The election of an invention or species may be made with or without traverse. To reserve a

right to petition, the election must be made with traverse. If the reply does not distinctly and

specifically point out supposed errors in the restriction requirement, the election shall be treated as an

election without traverse.

7.   Should applicant traverse on the ground that the inventions or species are not patentably

distinct, applicant should submit evidence or identify such evidence now of record showing the

inventions or species to be obvious variants or clearly admit on the record that this is the case. In

either instance, if the examiner finds one of the inventions unpatentable over the prior art, the

evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

8.   Applicant is reminded that upon the cancellation of claims to a non-elected invention, the

inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently

named inventors is no longer an inventor of at least one claim remaining in the application. Any

amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee

required under 37 CFR 1.17(i).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in
37 CFR 1.136(a).
        A shortened statutory period for reply to this final action is set to expire THREE MONTHS from
the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing

date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN E. RENDÓN whose telephone number is (571)272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dimtry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/   /CHRISTIAN E RENDÓN/
Supervisory Patent Examiner, Art Unit 3714   Examiner Art Unit 3714

CER